

**Tennessee Department of State
Division of Business Services**

FILING GUIDE

SERVICE OF PROCESS



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Secretary of State

2005 Revised Edition

NOTE: Form USM-94, "Request for Service Abroad of Judicial or Extrajudicial Documents," found on pages 13-15 of the Service of Process Filing Guide, is not included in this Internet version of the Guide.

Tennessee Department of State Division of Business Services

MISSION

The mission of the Division of Business Services is to execute the statutory processing and recordkeeping duties of the Secretary of State relating to businesses in Tennessee.

GOAL

Our goal is to provide our customers with document processing services that are prompt, accurate and complete.

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INTRODUCTION

The Tennessee Secretary of State is authorized to issue service of process: (1) on out-of-state defendants as provided under the State's Long-Arm Statutes; (2) on businesses without registered agents as provided under the Tennessee Business Corporation Act, Tennessee Nonprofit Corporation Act, Tennessee Limited Liability Company Act, Tennessee Revised Uniform Limited Partnership Act, and Tennessee Revised Uniform Partnership Act; and (3) on persons or businesses in foreign countries in accordance with the provisions of The Hague Convention.

Service of process has been a function of the Office of the Tennessee Secretary of State since March 1875. The Division of Business Services is the section of the Department of State that is currently responsible for executing the duties and functions of the Secretary of State relative to service of process. Annually, the Division processes over 13,800 summons.

In addition to issuing service of process, the Division of Business Services maintains a record of all process served by the office.

This publication is intended as an **introductory guide** to the issuance of service of process by the Division of Business Services in accordance with the provision of the aforementioned statutes. This publication is not a replacement for the statutes or for legal or other professional advice.

The Long-Arm Statutes can be found in the Tennessee Code Annotated (TCA), Title 20, chapter 2, part 2. The Tennessee Business Corporation Act, Tennessee Nonprofit Corporation Act, and Tennessee Limited Liability Company Act can be found in TCA, Title 48, chapters 11-27, 51-68, and 201-248, respectively. The Tennessee Revised Uniform Partnership Act and the Tennessee Revised Uniform Limited Partnership Act can be found in TCA, Title 61, chapters 1 and 2, respectively. The Hague Convention is reprinted as an annotation to Rule 4, 28 U.S.C.A., Fed. R. Civ. P., Rules 1-11, (1992) (Annotation to Rule 4).

In addition, Tennessee Rules of Civil Procedure, Rule 4B, restates the statutory procedures for Long-Arm service through the Secretary of State on out-of-state defendants.

This publication reflects current statutory requirements through the 2004 Regular Session of the 103rd General Assembly.

March 14, 2005

CUSTOMER SERVICE INFORMATION

- **INTERNET WEBSITE.** The Division of Business Services has a World Wide Web page that currently contains:
 - General information about the Division of Business Services
 - Forms and fee schedules
 - Filing guides and information brochures
 - E-mail access to the Division (but currently **not** for document filing)
 - **A searchable online Service of Process database in which you can view the service status of submitted documents.**
 - Other searchable online databases, including a Business Information database

The Division's site may be accessed via the Secretary of State's home page at:

<http://www.state.tn.us/sos/>

- **MAILING ADDRESS.** The mailing address of the Division of Business Services is:

**Tennessee Department of State
Division of Business Services
Summons Section
312 Eighth Avenue North
6th Floor, William R. Snodgrass Tower
Nashville, TN 37243**

- **COUNTER SERVICE.** Customers may obtain services in person during regular business hours (8:00 a.m. until 4:30 p.m. (CST) Monday - Friday). The Division is located on the 6th floor of the William R. Snodgrass Tower, 312 Eighth Avenue North, Nashville, Tennessee. Directions to the office are available on our website (see above).
- **E-MAIL ADDRESS.** The Division of Business Services may be e-mailed by writing:

Business.Services@state.tn.us

- **FAX NUMBER.** The Division of Business Services fax number is:
615-532-2892

- **GENERAL TELEPHONE NUMBER.** For other assistance relating to service of process, please contact us at:

615-741-1799

- **COPIES OF STATUTES.**

The Division of Business Services does not provide copies of statutes referenced in this guide. This information usually is available at public libraries, law libraries and other locations that have access to the Tennessee Code Annotated (TCA). An unannotated version of the Tennessee Code currently is available on the Internet at www.michie.com/.

Certified copies of specific statutory provisions may be obtained by contacting the Tennessee Department of State, Administrative Procedures Division, at 312 Eighth Avenue North, 8th Floor, William R. Snodgrass Tower, Nashville, TN 37243, telephone number **615-741-7008**. The cost is \$2.00 per certification and \$0.25 per page.

Lexis Publishing currently publishes a reference manual entitled ***Tennessee Corporations, Partnerships and Associations Law Annotated.*** For purchasing information, contact Lexis Publishing, PO Box 7587, Charlottesville, VA 22906-7587, or call 1-800-562-1197.

- **MINISTERIAL DUTY.** The duties and responsibilities of the Division of Business Services with respect to the issuance of service of process are ministerial. In accepting or refusing a document for service of process, and in serving the document, the Division:
 1. Does not determine the legal validity or invalidity of the document;
 2. Does not determine that information in the document is correct or incorrect;
 3. Does not create a presumption that information in the document is correct or incorrect; and
 4. Does not establish that an attachment purporting to be an exact or conformed copy is in fact an exact or conformed copy.

SERVICE OF PROCESS UNDER TENNESSEE LONG-ARM STATUTES

- Service of process under Tennessee’s “Long-Arm” Statutes **may** be made through the Office of the Secretary of State, Division of Business Services, for the following categories of defendants in legal actions brought in Tennessee:
 1. Unincorporated associations or organizations, including nonresident partnerships and nonresident trusts, who have failed to appoint a process agent (see TCA §20-2-202);
 2. Nonresidents who use Tennessee highways (see TCA §20-2-203);
 3. Nonresidents who operate watercraft in Tennessee (see TCA §20-2-209);
 4. Nonresidents and residents of Tennessee outside the State who are subject to the jurisdiction of Tennessee courts but who are unavailable for personal service in Tennessee (see TCA §20-2-214);
 5. Nonresidents and other persons subject to the jurisdiction of Tennessee courts based on relationship, conduct or other ground as described in TCA §§ 20-2-222—20-2-225;
 6. Nonresident fiduciaries appointed pursuant to TCA §35-50-107;
 7. Consumer protection investigative demands to nonresidents pursuant to TCA §47-18-106;
 8. Nonresident landlords who have not designated a registered agent or whose registered agent cannot be found (TCA §66-28-105);
 9. Nonresident trademark registrants (TCA §47-25-515); and
 10. Nonresidents who are making a control share acquisitions under the provisions of the Tennessee Control Share Acquisition Act (TCA §48-103-304).

NOTE: Service of process on insurance companies must be made through the Commissioner of the Tennessee Department of Commerce and

Insurance, Attn: Service of Process; 500 James Robertson Parkway, Nashville, TN 37243-1131 (telephone #615-532-5260). See TCA §56-2-103.

- **Under Tennessee Long-Arm Statutes, the Tennessee Secretary of State, Division of Business Services, functions as a service of process “agent” for certain defendants only to the extent required or permitted by such statutes. These statutory functions involve the receipt of service documents in cases arising in Tennessee courts, the collection of applicable processing fees, and the processing of the documents in accordance with the procedures outlined below. This office is neither authorized nor permitted to accept other forms of service or other legal documents for or on behalf of such defendants.**
- Service of process under Tennessee’s “Long-Arm” Statutes applies to the issuance of both civil and criminal summons.
- The provisions of the Long-Arm Statutes concerning service of process through the Secretary of State do not limit or affect the availability of service of process in any other manner provided by law.
- If a plaintiff or plaintiff’s attorney elects to have process issued under the Long-Arm Statutes through the Secretary of State, the following procedure is followed:
 1. The plaintiff or plaintiff’s attorney lodges the original summons and a copy (certified by the Clerk of the Tennessee Court in which the action is brought) with the Division of Business Services, Summons Section. More commonly, the plaintiff or plaintiff’s attorney requests that the Court Clerk submit the original summons and certified copy directly to the Division of Business Services for processing;
 2. The summons should be typewritten or printed in ink in a clear and legible fashion;
 3. If a court date appears on the summons, a sufficient amount of time for service should be permitted (please allow at least four weeks);
 4. The original summons and certified copy must be accompanied by a \$20.00 processing fee, made payable to the Tennessee Secretary of State;

5. The Division of Business Services sends the certified copy of the summons by registered or certified return receipt mail to the defendant, together with a written notice that service was made on the defendant through the Tennessee Secretary of State (upon request of the plaintiff or plaintiff's attorney, restricted mail delivery will be used);
 6. The Division of Business Services endorses the original summons with the signature of the Secretary of State, the date the Division mailed the certified copy to the defendant, and the date on which the Division received the return receipt of the defendant (accepted, refused or returned undelivered); and
 7. The Division of Business Services prepares an affidavit stating its compliance with the provisions of the Tennessee Long-Arm Statutes and sends the affidavit, endorsed summons, and return receipt (accepted, refused or returned undelivered) to the Clerk of the Court in which the action is brought.
- Refusal by the defendant of registered or certified mail (or, under Rule 4B, Tennessee Rules of Civil Procedure, refusal by the defendant's agent), evidenced by appropriate notation of such fact by the postal authorities, is deemed the equivalent of delivery and constitutes adequate service.
 - Under some of the Long-Arm statutes and under Rule 4B, Tennessee Rules of Civil Procedure, acceptance of process by registered or certified mail by any member of the addressee's family, over the age of sixteen (16) years and residing in the same dwelling, constitutes a sufficient delivery thereof to the addressee.
 - **A response by the defendant to any summons, and any subsequent pleadings or other legal documents should not be sent to the Division of Business Services but rather should be served as provided in the summons or applicable rules of procedure.**
 - Inquiries concerning the documents served by the Division of Business Services should be directed to the Clerk of the Court issuing the summons.

Common Rejection Reasons

- Avoiding the frequently encountered problems noted below will help ensure that the process can be issued in a timely fashion.
 1. An insufficient number of copies of the summons are submitted (An original and one certified copy are required for each defendant).
 2. No out-of-state address is listed for the defendant.
 3. The defendant and/or agent for service of process has a Tennessee address (such process should be served by the Sheriff of the appropriate county).
 4. The \$20.00 filing fee is not enclosed.
 5. The check, bank draft, or money order is not made payable to the Tennessee Secretary of State.
 6. The original and/or certified copy of the summons is not signed by the Clerk or Deputy Clerk.
 7. The Clerk's certified stamp, seal or imprint is not affixed to the summons.
 8. The process is to be served on an insurance company; such process must be served through the Commissioner of the Tennessee Department of Commerce and Insurance.
 9. The action is instituted in a court outside Tennessee (The Long-Arm Statutes in the appropriate jurisdiction should be consulted for correct processing of the document).

SERVICE OF PROCESS UNDER TENNESSEE LAWS
APPLICABLE TO BUSINESSES

- Service of process under the Tennessee Business Corporation Act, Tennessee Nonprofit Corporation Act, Tennessee Limited Liability Company Act, Tennessee Revised Uniform Limited Partnership Act, and Tennessee Revised Uniform Partnership Act **may** be made through the Office of the Secretary of State, Division of Business Services, for the following categories of defendants in legal actions brought in Tennessee:

1. A domestic for-profit corporation, nonprofit corporation, limited liability company, limited partnership or limited liability partnership, or a foreign for-profit corporation, nonprofit corporation, limited liability company, limited partnership or limited liability partnership doing business in Tennessee when:

- The business fails to appoint or maintain a registered agent in Tennessee;
- The business has a registered agent that cannot be found with reasonable diligence;
- The foreign business transacts business or conducts affairs in Tennessee without first obtaining a certificate of authority; or
- The foreign business' certificate of authority or registration has been canceled or revoked.

See TCA §48-15-104, §48-25-201, §48-25-302, §48-25-305, §48-55-104, §48-65-401, §48-65-302, §48-65-305, §48-208-104, §48-246-460-401, §48-246-502, §48-246-505, §61-2-105, and §61-2-906;

2. A foreign for-profit corporation, nonprofit corporation, limited liability company, limited partnership or limited liability partnership that has filed a certificate of withdrawal (or canceled its certificate of authority, canceled its certificate of registration or filed a notice of withdrawal) and has appointed the Secretary of State as its agent for service of process. See TCA §48-25-201, §48-25-305, §48-65-201,

§48-65-305, §48-246-401, §48-246-505, §61-2-906, §61-2-910, and §61-1-1004; and

3. A surviving foreign entity in order to enforce certain obligations and rights relative to a domestic company that is a party to a merger. See TCA §48-21-109, §48-21-110, §48-61-106, §48-244-103, §61-1-906, and §61-2-211.

NOTE: Service of process on insurance companies must be made through the Commissioner of the Tennessee Department of Commerce and Insurance, Attn: Service of Process; 500 James Robertson Parkway, Nashville, TN 37243-1131 (telephone #615-532-5260). The service fee is \$15 per document served. See TCA §56-2-103.

Service of process under the Tennessee Securities Act of 1980, TCA §48-1-101 et seq., should be made through the Commissioner of the Tennessee Department of Commerce and Insurance. TCA §48-2-124.

Service of process under the Tennessee Investor Protection Act, TCA §48-103-101 et seq., should be made through the Commissioner of the Tennessee Department of Commerce and Insurance. TCA §48-103-107.

- **Under Tennessee laws applicable to businesses, the Tennessee Secretary of State, Division of Business Services, functions as a service of process “agent” for certain businesses only to the extent required or permitted by such statutes. These statutory functions involve the receipt of service documents in cases arising in Tennessee courts, the collection of applicable processing fees, and the processing of the documents in accordance with the procedures outlined below. This office is neither authorized nor permitted to accept other forms of service or other legal documents for or on behalf of any such business.**
- Service of process under these Acts applies to the issuance of both civil and criminal summons.
- The provisions of these Acts concerning service of process through the Secretary of State do not limit or affect the availability of service of process in any other manner provided by law.
- If a plaintiff or plaintiff’s attorney elects to have process issued under these Acts through the Secretary of State, the following procedure is followed:

1. The plaintiff or plaintiff's attorney lodges the original process and a copy (certified by the Clerk of the Tennessee Court in which the action is brought) with the Division of Business Services, Summons Section. More commonly, the plaintiff or plaintiff's attorney requests that the Court Clerk submit the original summons and certified copy directly to the Division of Business Services for processing;
2. The summons should be typewritten or printed in ink in a clear and legible fashion;
3. A statement which identifies the grounds upon which service of process through the Secretary of State is based (see #1 in the previous section; an affidavit or other evidence from the serving officer that the agent could not be located is also adequate);
4. If a court date appears on the summons, a sufficient amount of time for service should be permitted (please allow at least four weeks);
5. The original summons and certified copy must be accompanied by a \$20.00 processing fee, made payable to the Tennessee Secretary of State;
6. The Division of Business Services sends the certified copy of the summons by registered or certified return receipt mail to the defendant, together with a written notice that service of the original document was made on the defendant through the Tennessee Secretary of State (Upon request of the plaintiff or plaintiff's attorney, the Division of Business Services will use restricted mail delivery).

NOTE: The certified copy is addressed to the business at its registered office or principal office as shown in the records on file in the Division of Business Services, or as shown in the official registry of the state or country in which such business is incorporated, organized or formed. If none of these addresses are available to the Division of Business Services, service is made on any one of the incorporators, organizers, or general partners at the address set forth in the charter, articles or certificate. The Division of Business Services may require the plaintiff or plaintiff's attorney to furnish the latter address;

7. The Division of Business Services endorses the original summons with the signature of the Secretary of State, the date the Division mailed the certified copy to the defendant, and the date on which the Division received the return receipt of the defendant (accepted, refused or returned undelivered); and
 8. The Division of Business Services prepares an affidavit stating its compliance with the provisions of the applicable service of process statutes and sends the affidavit, endorsed summons and the return receipt (accepted, refused or returned undelivered) to the Clerk of the Court in which the action is brought.
- Refusal by the business to accept delivery of the registered or certified mail, or refusal or failure to sign the return receipt does not affect the validity of the service, and any business refusing or failing to accept delivery of such registered or certified mail is charged with knowledge of the contents of any process, notice or demand contained therein.
 - A response by the defendant to any summons should **not** be sent to the Division of Business Services but rather should be served as provided in the summons or applicable rules of procedure.
 - Inquiries concerning the documents served by the Division of Business Services should be directed to the Clerk of the Court issuing the summons.
 - Subsequent pleadings or papers permitted or required to be served on a defendant business may but are not required to be served in the same manner.

Common Rejection Reasons

- Avoiding the frequently encountered problems noted below will help ensure that the process can be issued in a timely fashion.
 1. An insufficient number of copies of the summons are submitted (An original and one certified copy are required for each defendant).
 2. No address is listed for the defendant.
 3. No statement or other evidence is provided that indicates the basis for service of process through the Secretary of State (for example,

the summons lists a registered agent with a Tennessee address, but there is no evidence that service by a serving officer has been attempted).

4. The \$20.00 filing fee is not enclosed.
5. The check, bank draft, or money order is not made payable to the Tennessee Secretary of State.
6. The original and/or certified copy of the summons is not signed by the Clerk or Deputy Clerk.
7. The Clerk's certified stamp, seal or imprint is not affixed to the summons.
8. The process is to be served on an insurance company; such process must be served through the Commissioner of the Tennessee Department of Commerce and Insurance.
9. The action is instituted in a court outside Tennessee.

SERVICE OF PROCESS UNDER THE HAGUE CONVENTION

- Service of process on a person or business in a foreign country may be made in accordance with the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, signed at The Hague, November 15, 1965, commonly referred to as The Hague Convention. The Convention is reprinted as an annotation to Rule 4, 28 U.S.C.A., Fed. R. Civ. P., Rules 1-11, (1992) (Annotation to Rule 4).
- If the defendant is in a country that has not ratified The Hague Convention, a bilateral treaty may control the service of process. If there is no treaty, then the provisions of TCA §20-2-113 may apply.
- If a plaintiff or plaintiff's attorney elects to have process issued under The Hague Convention through the Tennessee Secretary of State and the Central Authority of the foreign country, the following procedure is followed:

1. The plaintiff or plaintiff's attorney lodges the original process and a copy (certified by the Clerk of the Tennessee Court in which the action is brought) with the Division of Business Services;
2. The plaintiff or plaintiff's attorney must complete and deliver to the Division of Business Services two copies of the "Request for Service Abroad of Judicial or Extrajudicial Documents" Form (USM-94) (reprinted at the end of the Convention). Copies of the form may be obtained from the local office of the United States Marshal's Service, and a copy of the form appears on pages 13-15 of this filing guide. The "applicant" should be designated as the Tennessee Secretary of State;
3. The summons, complaint and any exhibits to the complaint should be translated into an official language of the foreign country and two copies of the translations should be delivered to the Division of Business Services;
4. The completed documents should be accompanied by payment of the \$20.00 processing fee, made payable to the Tennessee Secretary of State;
5. Upon receipt of the aforementioned documents, the Division of Business Services on behalf of the Tennessee Secretary of State will forward the documents to the Central Authority of the foreign country for processing;
6. Under the terms of The Hague Convention, the Central Authority completes a return certificate to the Tennessee Secretary of State indicating that process has been served and stating the method, the place and date of service, and the person to whom the document was delivered. If process is not served, then the return certificate must state why service has not been made; and
7. The Division of Business Services will forward the return certificate to the appropriate Court Clerk, together with any other documentation required under Tennessee law.